



Senate

General Assembly

File No. 608

January Session, 2017

Senate Bill No. 442

Senate, April 13, 2017

The Committee on Public Health reported through SEN. GERRATANA of the 6th Dist. and SEN. SOMERS of the 18th Dist., Chairpersons of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CLARIFYING THE RIGHT TO ENFORCE ANTITRUST LAWS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) In any action brought under
2 subsection (c) of section 35-32 of the general statutes or seeking treble
3 damages under section 35-35 of the general statutes, a defendant that
4 sells, distributes or otherwise disposes of any drug or device, as
5 defined in 21 USC 321, as amended from time to time:

6 (1) May not assert as a defense that the defendant did not deal
7 directly with the person on whose behalf the action is brought; and

8 (2) May, in order to avoid duplicative liability, prove, as a partial or
9 complete defense against a damage claim, that all or any part of an
10 alleged overcharge for a drug or device ultimately was passed on to
11 another person by a purchaser or a seller in the chain of manufacture,
12 production or distribution of the drug or device that paid the alleged
13 overcharge.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage</i>	New section
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PH *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 18 \$	FY 19 \$
Resources of the General Fund	GF - Potential Revenue Gain	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill expands eligibility to pursue damages under current antitrust law regarding certain drugs and medical devices from persons who bought directly from a defendant to all purchasers. To the extent that the Office of the Attorney General is able to recover additional damages on behalf of the state there is potential for increased revenues.

The potential increased revenue is limited by several factors, including prevalence of antitrust activity, in state use of the drug or device in question, and availability of resources within the Office of the Attorney General to pursue additional cases.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**SB 442*****AN ACT CLARIFYING THE RIGHT TO ENFORCE ANTITRUST LAWS.*****SUMMARY**

This bill makes two related changes concerning antitrust cases against companies that sell, distribute, or otherwise dispose of drugs or medical devices (e.g., drug manufacturers).

It allows purchasers of these products who did not buy directly from the defendant company (indirect purchasers) to recover against the defendant for an antitrust violation. The bill does so by prohibiting such a defendant from raising the defense that it did not deal directly with the person on whose behalf the case was brought.

But the bill allows a defendant, in order to avoid duplicative liability related to an alleged overcharge, to prove that all or part of the overcharge was passed on by someone else in the chain of manufacture, production, or distribution of the drug or device. The bill specifies that the defendant may attempt to prove this as a partial or complete defense.

The bill applies to antitrust cases brought by the attorney general in the name of the state as “*parens patriae*” on behalf of (1) particular state residents (including class actions) or (2) the state as a whole or a political subdivision of it. It also applies to cases seeking treble damages for antitrust violations that damaged the business or property of the state or any person, including a consumer.

EFFECTIVE DATE: Upon passage

BACKGROUND***Related Case***

In a 2002 case, the state Supreme Court held that indirect purchasers could not recover under the existing antitrust statutes. The plaintiff, an end user licensee of a software product purchased at a retail store, had alleged that the product manufacturer had a monopoly on the market and thus violated antitrust laws. The court examined legislative history and guidance from federal law and held that under the existing state antitrust law, only consumers who purchased directly from a company could bring an antitrust case against that company (*Vacco v. Microsoft Corporation*, 260 Conn. 59 (2002)).

Antitrust Law

The Connecticut Antitrust Act prohibits a contract or conspiracy in restraint of trade or that seeks to monopolize a market. Among other things, this includes contracts or conspiracies to fix prices, control the production of a good, divide markets, or refuse to deal with third parties (CGS § 35-24 et seq.).

COMMITTEE ACTION

Public Health Committee

Joint Favorable

Yea 26 Nay 0 (03/27/2017)